THE

Madras Weekly Notes.

1911] Sunday August 13, 1911 [1911

THE MIDNAPUR DAMAGE SUIT

The Judgment of Mr. Justice Fletcher in what is known as the Midnapur Damage suit was delivered on the 7th of this month, awarding Rs. 1,000 damages with costs to Peari Mohan Dass, the plaintiff against Mr. Weston, the District Magistrate of Midnapur and others. The trial of the case lasted for over a year. The case has created the greatest sensation and the public have taken a good deal of interest in the case and awaited the result with great anxiety. We hope that the verdict of Mr. Justice Fletcher has given widespread satisfaction to the public. We congratulate Mr. K. B. Dutt, counsel for the plaintiff, who has conducted the case with great zeal and remarkable ability amidst considerable difficulties and against great odds on the successful termination of his labours.

In response to Mr. Dutt's request that His Lordship should decide whether he and his friends had departed from the best traditions of the English Bar, Justice Fletcher observed that they were not guilty of any unprofessional conduct, that Mr. Dutt was justified in acting as Counsel for the plaintiff and that His Lordship was satisfied why Mr. Dutt did not go into the witness-box but regretted to observe that the rules relating to professional conduct were not observed by Mr. Dutt's opponents. We cannot conclude without observing that Mr. Justice Fletcher has shown great powers of patience and endurance and was thoroughly impartial during the long and protracted trial of this case. Judges and Judgments like these restore the confidence of the people in the integrity of British justice in the land.

GOVERNMENT AND THE PALGHAUT MUNICIPAL COUNCILLORS

We welcome the long state document issued by the Madras Government regarding the Palghaut Municipality particularly because the Government recognises the expediency of publishing the material portions of the record and making a full statement of the facts in deference to the amount of public interest which the case has aroused. A close and critical examination of the Government order shows that the Government tries to establish three things by this document, *viz*

1. That Mr. Ramanujachariar, the Vice Principal and first Assistant in the Victoria College, Palghaut, was guilty of grave and persistent insubordination; that he was a party to the grave impropriety of allowing his case to be discussed in the public press before it had been dealt with by the proper authorities and that his return to the College could not fail to harm the institution and to weaken the disciplinary control of the Principal altogether incompatible with efficient management.

2. That the eight councillors who voted for the reinstatement of Mr. Ramanujachariar were not actuated in doing so

solely by conscientious motives and regard for the public interests, but that they allowed personal feelings to override all regard for public good.

3. That His Excellency in Council could remove the eight councillors who voted for the reinstatement of Mr. Ramanujachari under the powers vested in them by section 19 of the District Municipalities Act, but that they would merely stop with censuring gravely the conduct of the councillors on the present occasion.

We may at once say that the Government is not wrong in interpreting section 19 in the manner in which they did. We are of opinion that the said section can rightly be applied to the case of the eight councillors concerned in the Palghaut affair as long as the words "*are likely to bring the Municipal administration into contempt*" remain in the Statute Book, if only the conclusions of fact arrived at by the Government against these councillors are correct.

But the most important question remains whether the Government is right in their conclusions. We are sorry that the Government in spite of its long and laborious attempt has failed to convince us that it is right. One strong point that is sought to be made against the councillors is that in voting for the reinstatement of Mr. Ramanujachari they were actuated by a factious spirit against the chairman, and that there was really no possibility of coming to any other conclusion than that Mr. Ramanujachari was rightly dismissed by the chairman. Three instances of concerted faction were quoted against the councillors. The first is that the councillors wanted the chairman not to send the Administration Report before circulating the same and allowing the councillors to record their opinion thereon. But the chairman disregarded their request and when the matter went up to the Government the Government, said that the action of the chairman did not altogether commend itself to them but still as the language of the councillors in their petition to the Government was strong, they showered all the censure on the councillors and the chairman, though wrong, was allowed to go scotfree. The next instance is where a contractor brought a suit against the chairman ; the court which dealt with the suit took occasion to make very severe strictures upon the chairman and passed a decree in favour of the contractor. The propriety of appealing against the judgment was considered by the council and the majority decided not to appeal, on the ground that they did not wish to throw good money after bad. It is now alleged that they voted against appealing in order to discredit the chairman. But what about the court which decided the suit against the chairman and passed very severe strictures upon him? Was the judge who presided over the court also a party to the faction? The third instance was where the Municipal Council had passed a resolution that a committee should be appointed from among themselves to check and measure works before passing the bills. The checking and measuring of work should be done by somebody before the bills are passed and the councillors undertook to do the work themselves. It may be that the councillors' resolution was illegal and *ultra vires* but where is the factious spirit? After quoting these three instances, the Government order further says that the council's reputation for faction extends over a period of nearly twenty years. What is the relevancy of this observation? We cannot help observing that this is

again the story of the wolf and the lamb. Surely, it is not these eight offending councillors that sat in the council all these twenty years. Government's case seems to be that if it is not these councillors, it is their fathers or predecessors in title. Everybody knows that the council is a fluctuating body, its personnel varying almost every year.

Another point sought to be made against the councillors, is their absence from the special meeting of the municipal council convened on the 5th June in pursuance of the Government Order dated 2nd June 1911, requesting the council to reconsider the resolutions previously passed. In the first place, we may ask under what provision of the District Municipalities Act, did the Government direct the Municipal council to reconsider its resolution. It was altogether an illegal demand on the part of the Government. And the Municipal councillors were justified in refusing to satisfy this illegal demand. The Government finding itself powerless, if it proceeded directly according to law, took the indirect course of compelling the council to cancel its previous resolutions by sending another message to the chairman to convene a second special meeting for the same purpose and by simultaneously calling upon the eight councillors whose votes had procured the passing of the previous resolutions to show cause why they should not be removed from the council under cl. (4), sub-section 1 of section 19 of the Madras District Municipalities Act. This course is admittedly adopted by the Government with a view to compel the council to cancel its previous resolutions and attain their object in view namely the removal of Mr. Ramanujachari from the Victoria College. The Government is now glad that their object was accomplished because the council subsequent to the threat of removal, of the eight councillors cancelled its previous resolutions at its meeting on the 23rd June 1911. We will leave this portion merely observing that this threat of removal would not have seen the light of the day if the offending councillors had attended the meeting of the 5th June subservient to the command of the Government.

Coming next to the judgment of the Municipal council reinstating Mr. Ramanujachari, we have no doubt that the judgment can be upheld under the circumstances. The chairman dismissed the Vice-Principal without taking any explanation from him, and condemned him without hearing him. No charges were framed against him. The root of all Jurisdiction is that the other side must be served and heard and where the Jurisdictional facts are wanting, the order is liable to be set aside. The council had nothing before them, except the vague charge of insubordination and there were no specific instances of insubordination contained in Mr. Davey's letter. The council was sitting only as an appellate court against the chairman's order. There was really no evidence before them on which they could uphold the dismissal by the chairman. The procedure was extremely irregular and we therefore think that the council was fully justified in its conclusion. In any event, we may say that there is scope with the material on hand for any other Judge to have come to the same conclusion.

As regards the merits of Mr. Ramanujachari's case, we cannot help observing that the Government order based on the onesided representations of Mr. Davey and the Chairman raked up old faults and

past sins which may be taken to have been condoned and made mountains of mole-hills. We are still in the dark as to the specific instances of insubordination on the part of Mr. Ramanujachari.

A careful scrutiny of the long Government Order cannot but leave the impression on any close and critical reader of this document that it is more an ingenious address of a clever advocate than the Judgment of an impartial Judge.

Apart from the legal and technical aspects of the case which have been so far dealt with, there is yet a more important aspect of it, *viz*., the political and constitutional one; and judged from this stand-point the G. O. is fraught with danger to the growth of local Self-Government in this presidency. After the best consideration that we could give to the subject and assuming everything in favour of the Government and against the councillors, we are convinced that the remedy applied by the Government to the state of things existing in the Municipal Council of Palghaut is infinitely worse than the disease. Hereafter no man with any modicum of self-respect in him will care to seek entrance into the Municipal Councils; and with the gradual deterioration of their personnel, the experiment of local Self-Government will be foredoomed to failure. This is all the more to be deplored since the Legislative Council under the new scheme is to consist of members who have had a training in these nurseries of Self-Government. The G. O. is calculated directly to frustrate the end of the beneficent Reform Scheme of Lord Morley, whose object was to attract the best Indians into the Councils of the Empire and associate them more closely in the Government of the Country. While a spirit of broad minded sympathy and high statesmanship pervades the Reform Scheme, the G. O. in question exhibits an intolerance of popular institutions which we deeply regret. Without condoning the factiousness of the Councillors, we are of opinion that if the Government had shown a little more tact and sympathy, it could have easily composed the differences between the Council and the Chairman and settled the matter amicably. In this connection we cannot help recalling how, when a strike of Railway employees occurred in one of the leading manufacturing cities of England, the matter seemed to be acute and Mr. Lyold George, then Home Secretary, went down thither and brought about a reconciliation between the employers and the employed and thus averted what might have been a national crisis. We very much wish that in the interests of the Local Self-Government in this Presidency, the member in charge of the Municipal Portfolio, had followed a similar course.

As has been said above, Sec. 19 of the District Municipalities Act is an unique provision, which does not find a place either in the Madras City Municipality Act, or in the Acts in force in other provinces. Though it may be invoked only on extraordinary occasions, it is none the less obnoxious to all principles of real local Self-Government and its existence is a perpetual menace to independent Councillors.

It is a somewhat trite political maxim that Municipal institutions thrive best when least controlled by the central authority. No better illustration of its truth can be furnished than by contrasting the vitality and usefulness of the Municipal institutions of England with

their feeble and ineffective counterparts in France. In England, where they are allowed considerable latitude of action, with the minimum of Governmental interference, they have attained their full development and have proved an unqualified success. Whereas, in France, where the departments, communes, and other local bodies are subjected to an excessive control by an overjealous Central Government, they are altogether paralysed, and in the words of a great constitutional Historian, "the progress of local Self Government is far from rapid." We therefore deprecate the growing tendency on the part of our Government to impose its own wishes in every matter on the Municipal Councils, if need be at the point of the sword, as it were. It may be that being still in their infancy, they may occasionally make mistakes, even grave mistakes. But better far in our opinion that they should be allowed to go astray now and then, and correct themselves in course of time, though this process may involve some troubles and expense—is not all experience, worth having, dearly bought ?—than that they should always be kept in the straight path by the leading strings of the Government.

THE INDIAN HIGH COURTS ACT AMENDMENT BILL

The Indian High Courts Act Amendment Bill, now under consideration, does not aim at any radical alterations ; but it only seeks to introduce a few minor changes to meet the requirements of the times. They are, the increase in the maximum number of judges, the creation of new High Courts from time to time, and the appointment of temporary Judges by the Governor-General in Council.

The maximum number of the Judges of a High Court shall according to the Bill be twenty instead of fifteen as heretofore. The growth of civilization and the general advancement of a country have their effect upon its legal institutions. Not only the volume of work before the courts of law increases but also questions of a varried and intricate character crop up for decision. And it is a matter of necessity that more Judges should be appointed to cope with the increasing amount of work.

The second amendment relates to Sec. 16 of the Act of 1861. Under that section His Majesty may establish a High Court in and for any portion of the territories within His Majesty's dominions in India *which are not included within the limits of the jurisdiction of another High Court.* But the Bill now empowers His Majesty to establish High Courts whenever and *wherever* necessary. It is apprehended by a few that such a power has been reserved from political considerations and that the High Courts in future would be dismembered in the same way in which provinces have been partitioned. We, for one, do not share any such apprehension. The ever-increasing mass of work may have to be met with, in the near future, as much by more High Courts as by more Judges ; and ample powers should therefore be given, once and forever, to establish as many High Courts as may be necessary. And it is quite clear that every increase in the number of the Courts would necessarily involve the adjustment of the local jurisdiction of one High Court or another.

The third section of the Bill provides for the appointment by the Governor-General in Council of additional Judges for a period not exceeding two years. The accumulated arrears of years have to

be cleared up; and sometimes particular cases tried by special tribunals, formed under special enactments, drag their weary length for months together. The appointment of additional Judges would, therefore, relieve the congestion of work to an appreciable degree. That such Judges should be appointed only by His Majesty is mere sentiment. The power of appointment is delegated to the Government of India only to ensure promptness and avoid delay. Further, even now acting appointments in the High Courts are filled up by the Local Government or the Government of India, as the case my be. What then is the objection against additional Judgeships which are also short appointments being filled up likewise? What is dignity in acting incumbents is certainly not its reverse in additional Judges.

It is not every day that the High Courts Act will be amended by the British Parliament. We therefore take this opportunity of suggesting another important amendment to the proviso to Sec. 2 of the Act of 1861. The section after enumerating the classes of persons from whom the selection of Judges is to be made proceeds to lay down that not less than one third of the judges of such High Courts including the Chief Justice shall be Barristers and not less than one third shall be members of the Covenanted Civil Service. When, in providing for the composition of the High Courts consistent with their efficiency and dignity in 1861 when there was not much of indigenous talent available the statute took care to insert an obligatory provision for the minimum number of Barristers on the one hand, and that of the members of the Indian Civil Service on the other, is it not now bare justice, we ask, that a legislative safeguard should be inserted to protect the interests of indigenous talent? Judicial officers not inferior to a Sub-Judge or a Judge of a Small Cause Court and Pleaders of High Courts, of certain standing, have, no doubt, been recognised by the Act as eligible for Judgeship. But a recognition of eligibility and a policy of appointing an Indian Judge or two is one thing, and the existence of a statutory obligation to appoint a well defined proportion of Indian Judges is quite another. We think the time has already come for such a statutory safeguard in favour of the Vakils of the High Court and the members of the higher provincial judiciary. And we hope that such a provision would now be made as much in appreciation of the high abilities of the class to whose claims we draw attention as in deference to the unanimity of public opinion on the question.

SYNOPSIS OF CASE LAW

Ganapatras Balakrishna v. H. H. the Maharaja Madhavarao Sinde, 35 *Bom.* 1.

Where money is held by a stake-holder on account of the plaintiff and the defendant as security for the latter's fidelity in his agency and as applicable to answer any failure by him to account, held that the creditor having the control of the security, is chargeable with what he might have received from it but for his *wilful* default.

Chunilal v. *Secretary of State for India*, 35 Bom. 12.

The maxim *actio personalis moritur cum-personam* will not apply in cases where the injury complained of is to a personal estate and the compensation is claimed on the strength of an express or implied contract.

Nominal damages shall be awarded only when there is failure to prove any appreciable damage in fact.